

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5906 of 1986

with

SPECIAL CIVIL APPLICATION No 3475 of 1987

&

SPECIAL CIVIL APPLICATION No 6686 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MANIBHAI KALIDAS PATEL SINCE DECEASED THROUGH HIS HEIRS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5906 of 1986
M/S ANAND ADVOCATES for Petitioners
GOVERNMENT PLEADER for Respondent No. 1, 2
2. Special Civil Application No 3475 of 1987
M/S. ANAND ADVOCATES for Petitioners
MR DA BAMBHANIA for Respondent No. 1, 2
3. Special Civil Application No. 6686 of 1986

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/12/2000

C.A.V.JUDGEMENT

#. As all these three matters proceed on the same facts and grounds and the grievances made by the petitioners are also identical, the same are being taken up for hearing together and are being disposed of by this common judgment. Arguments have been made by learned counsel for the parties with reference to special civil application No.5906 of 1986. The facts of this case are taken up for deciding these matters from this petition.

#. The petitioner, since deceased, now represented by his legal heirs, by this petition under Article 226 of the Constitution initially prayed to confer the petitioner, the deemed date of promotion w.e.f. 21st August, 1972 to the post of District Inspector of Land Records, Class-II, when his immediate junior was promoted to the same post. Next prayer is made to fix the salary of the petitioner on the basis of deemed date of promotion of 21st August, 1972 to the post of District Inspector, Land Records, class-II and to pay the arrears of salary on that basis to the petitioner. Third prayer is made to confer upon the petitioner all consequential benefits including seniority and further promotion on the basis of deemed date of promotion of 21st August, 1972 to the post of District Inspector, Land Records, and pay fixation as prayed for in prayers (A) and (B) as well as interest @ 18% p.a. on the outstanding arrears.

#. Heard the learned counsel for the parties.

#. During the pendency of this petition, the petitioner got the writ petition amended and further prayer has been made to confer upon the petitioner the deemed date of promotion to the post of Superintendent of Land Records or equivalent post in Class-I when his immediate junior beginning with Shri C.R.Babaria and/or other persons below him in the select list of the class-I post were promoted to the said post and to confer upon him all consequential benefits also. This claim has been made by petitioner for deemed date of promotion on the ground that though he was due to appear in Land Records qualifying examination sometime in the year 1959, permission was not granted to appear in the examination.

It is the grievance of the petitioner that large number of his juniors were allowed to appear in Land Records qualifying examination. The learned counsel for the petitioner does not dispute that for promotion to the post of District Inspector of Land Records, class-II, this qualifying examination is one of the eligibility to be possessed by the person concerned. The persons who are junior to the petitioner were eligible earlier to the petitioner and they have been given promotion to the post of District Inspector of Land Records, Class-II, and as a result of which they are getting seniority in other cadre. The juniors were permitted as per the case of the petitioner to appear in this qualifying examination during the period 1959 to 1968 and at that time the petitioner had not raised any objection, meaning thereby, he permitted those junior persons to appear in the examination and further to the department to give them seniority on the higher post. The petitioner passed this qualifying examination after 25.6.68, the day on which he was given permission to appear in this examination. Though the petitioner has passed this examination in 1968, and he was claiming himself to be very senior, thereafter also, he was given promotion on the post of District Inspector Land Records, Class-II, on 19.1.1980. The petitioner has not made any grievance against the action of the respondents not to grant him promotion earlier to 1980 as well as to give promotion after passing of the examination. That seems to be the strategy or modus-operandi with the petitioner to first take promotion as what it is generally the strategy and modus-operandi amongst the employees and officers of the State. The petitioner, after his promotion, started to claim the deemed date of promotion and all consequential benefits. If we go by the facts of this case, his immediate junior was promoted on 21st August, 1972. This petition has been filed by petitioner for this deemed date of promotion in the year 1986, i.e. after about fourteen years of the promotion of the junior. The very fact that the petitioner claims himself to be very senior in the feeder cadre and he acquired eligibility for promotion in the year 1969, he was not promoted for 12 years and that too he has not grievanced, shows that his service record would not have been clean or free from adversities, otherwise, when his juniors were promoted earlier to passing of this qualifying examination by him, immediately this promotion would have been given to him. On the basis of their promotion earlier in point of time, those juniors have acquired seniority on the promotional post and further as now it is clearly borne out from the prayer made by petitioner as amended in the petitioner that they have been promoted to the next higher post. In

case, the petitioner would have really any grievance against the action of the respondents not to permit him to appear in qualifying examination earlier, then the matter would have been taken at the very stage and he should not have waited for all these years. The petitioner acquiesced and has accepted all this. It is further to be noticed that in the year 1980, the petitioner was given promotion on provisional basis and thereafter also he has not raised any claim for his deemed date of promotion. Only when the petitioner was given regular promotion on long term basis, he thereafter started to claim this deemed date of promotion. From these facts, it is clear that the petitioner in fact, had not felt aggrieved of all this action of the respondents till he was given promotion as District Inspector, Land Records, Class-II, on long term basis and thereafter, he started to make all these claims. Only on this conduct of the petitioner and secondly the position of juniors has been settled and it cannot be unsettled and lastly none of the juniors have been impleaded as a party to this petition, no relief can be granted to the petitioner.

#. As facts of the two other cases are also identical, as they have also grievanced that they were not granted permission to appear in the qualifying examination and juniors were permitted as a result of which they have been promoted, and their cases are also similar, they are also not entitled for any relief in these matters.

#. As a result of aforesaid discussion, all these petitions fail and the same are dismissed. Rule discharged. Interim relief, if any, earlier granted, stands vacated. No order as to costs.

.....

(sunil)